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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

19 Cr. 833 (SHS)

6 JOSEPH DEPAOLA,  
7 a/k/a "Joe Hall,"

8 Defendant.

9 Sentence  
10 -----x

11 New York, N.Y.  
12 August 2, 2021  
13 3:30 p.m.

14 Before:

15 HON. SIDNEY H. STEIN,

16 District Judge

17 APPEARANCES

18 AUDREY STRAUSS

19 United States Attorney for the  
20 Southern District of New York

21 BY: KIERSTEN A. FLETCHER  
22 Assistant United States Attorney

23 ZACHARY MARGULIS-OHNUMA

24 Attorney for Defendant

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1 (Case called; appearances noted)

2 THE COURT: Good afternoon to all of you. Please be  
3 seated.

4 I have the presentence report, dated March 26 and  
5 revised on April 19 of this year, along with the addendum and  
6 the sentencing recommendation. At an offense level of 22,  
7 criminal history category of III, guideline range of 51 to 63  
8 months, there's a recommendation by the probation department of  
9 36 months as a variance.

10 I also have the letters of the defense firm, dated  
11 July 19, along with its various letters and attachments,  
12 records and so forth, and the submission of the defense team,  
13 dated July 30. I have the government letter, dated July 22,  
14 listing the government's view of relative culpability of people  
15 in the conspiracy.

16 Is there any additional information I should have?

17 Defense.

18 MR. MARGULIS-OHNUMA: No, but I think you omitted one  
19 of the government's letters.

20 Nothing more for the defense.

21 THE COURT: Government.

22 MS. FLETCHER: That's right, your Honor. There's also  
23 a submission, dated July 26, 2021, which was the government's  
24 sentencing submission for both Derrek Larkin and Joseph  
25 DePaola.

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1                   THE COURT: Oh, yes, I happened to put that in the  
2 pile with the Larkin sentencing. Hand that up, though, just so  
3 that I have it in front of me. I'll ignore any interlineations  
4 you may have on your copy.

5                   MS. FLETCHER: There are none, Judge. It's a clean  
6 copy, but it's my only one, so hopefully I won't have to refer  
7 to it. And in addition to that submission, I handed up to  
8 Ms. Blakely at the beginning of the conference a signed consent  
9 forfeiture order for the Court's consideration.

10                  THE COURT: Thank you.

11                  I'm handing the government's copy back.

12                  MS. FLETCHER: Thank you.

13                  THE COURT: Yes, I did see this in connection with  
14 Mr. Larkin's sentencing earlier today, but now that I look at  
15 your footnote, it's a little different -- in ECF document 312.  
16 It's a little bit different than I was thinking, so let's  
17 handle it.

18                  What I was going to do, and I thought the parties were  
19 agreed that it's not a criminal history category III but,  
20 rather, criminal history category II; that is, total offense  
21 level of 22, criminal history category II, guideline range of  
22 46 to 57.

23                  Are we agreed upon that?

24                  Defense.

25                  MR. MARGULIS-OHNUMA: Yeah, we objected to the two

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1       criminal history-point increase for committing an offense while  
2       on a sentence of probation.

3           THE COURT: Yes, and I thought the government agreed  
4       with that.

5           MR. MARGULIS-OHNUMA: And it does, I think.

6           THE COURT: All right.

7           MR. MARGULIS-OHNUMA: Yes.

8           THE COURT: So let's take it step by step. Defense,  
9       you agree that it's a total offense level of 22, criminal  
10      history category II, guideline range of 46 to 57, correct?

11           MR. MARGULIS-OHNUMA: Now I'm questioning myself about  
12      the criminal history category because the government's letter  
13      says that it's one criminal history point.

14           THE COURT: That's exactly what just caught my  
15      attention.

16           MS. FLETCHER: Yeah.

17           THE COURT: What I think, although we'll hear what the  
18      parties think, is that there's one criminal history point under  
19      paragraph 48 for theft by unlawful taking, a Bergen County  
20      case, for which he received two years' probation. And one  
21      point under paragraph 49, for prowling to obtain a controlled  
22      substance in the same county. That's two points. He did not  
23      commit the instant offense while under a criminal justice  
24      sentence of probation, and therefore, I was going to strike  
25      paragraph 51 and amend paragraph 52 to say the criminal history

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1 category score is two and the criminal history category is II,  
2 accordingly. However, the government's footnote, I think, is  
3 incorrect.

4 MS. FLETCHER: It is incorrect, your Honor.

5 THE COURT: All right.

6 MS. FLETCHER: The guidelines calculation as just set  
7 forth by the Court is correct and consistent with the plea  
8 agreement.

9 THE COURT: All right. Fine.

10 Defense, I think we're all agreed, but let's clear it  
11 up.

12 MR. MARGULIS-OHNUMA: Much as I would love to  
13 capitalize on that error, I don't think I can and I think I'm  
14 in agreement.

15 THE COURT: All right. Again, we all seem to be in  
16 agreement that the criminal history category score is two, and  
17 therefore, the criminal history category is II, and on the  
18 total offense level of 22, criminal history score -- criminal  
19 history category of II, the guideline range is 46 to 57.

20 Are we agreed, defense?

21 MR. MARGULIS-OHNUMA: Yes, your Honor.

22 THE COURT: Are we agreed, government?

23 MS. FLETCHER: Yes, your Honor.

24 THE COURT: All right. Then, all right. Let's go  
25 back.

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1           I have the consent preliminary order of forfeiture  
2 presented to me now, and I have ECF document 312, which is the  
3 government letter in regard to both Mr. Larkin and Mr. DePaola.  
4 With those additions, is there anything else the defense wants  
5 me to have in written form?

6           MR. MARGULIS-OHNUMA: No, your Honor.

7           THE COURT: Government.

8           MS. FLETCHER: No, your Honor.

9           THE COURT: Defendant, have you read -- that is,  
10 defense counsel -- have you read and discussed all of this  
11 information with your client, and do either of you have any  
12 objections to the findings of fact in the presentence report?

13           MR. MARGULIS-OHNUMA: I have reviewed it with my  
14 client. I don't have any remaining objections, your Honor.

15           THE COURT: All right.

16           Government, any objections to the findings of fact?

17           MS. FLETCHER: No, your Honor.

18           THE COURT: All right. I'm adopting the findings of  
19 fact with the changes I just said -- that is, I'm deleting  
20 paragraph 51, although let's not renumber anything. By 51 just  
21 put "deleted by the Court." And then in 52, the last word  
22 should be, instead of Roman numeral III, it should be Roman  
23 numeral II, and then the first sentence of paragraph 52, it  
24 should read "total criminal history score is two."

25           Now that I've confused things, let me state it

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1 clearly.

2 Paragraph 51 is deleted.

3 Paragraph 52 is amended to read as follows:

4 The total criminal history score is two. According to  
5 the sentencing table, U.S.S.G. chapter 5.A, criminal history  
6 score of two establishes a criminal history category of Roman  
7 numeral II.

8 All right. I have the consent preliminary order of  
9 forfeiture, ordering that the defendant forfeit \$400,000, and I  
10 am signing that.

11 All right. Mr. Margulis-Ohnuma, speak to me.

12 MR. MARGULIS-OHNUMA: Thank you very much, your Honor.

13 I won't reiterate everything I said in the papers,  
14 which I think paint a portrait of a young man who went astray,  
15 who was manipulated into going astray.

16 THE COURT: You mean he committed crimes. Isn't that  
17 what you mean?

18 MR. MARGULIS-OHNUMA: Yeah.

19 THE COURT: All right.

20 MR. MARGULIS-OHNUMA: That's exactly what I mean.  
21 Stole money from old people. There's no question about that.

22 THE COURT: Not only that, he wasn't just a salesman,  
23 he was a closer. He didn't run the sales floor, to his credit,  
24 but they brought him in. He was the sandman. When somebody  
25 was reluctant, he was a skilled salesman and he closed the

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1 deal.

2 MR. MARGULIS-OHNUMA: Well, he's a pretty articulate  
3 guy. He has a learning disability so he didn't do well in  
4 school and had trouble getting real jobs. His AA sponsor, you  
5 know, after years and years of drug addiction, he was brought  
6 out to it and led to the light through AA and his sponsor.

7 THE COURT: His sponsor was Hult and took advantage of  
8 him.

9 MR. MARGULIS-OHNUMA: Correct, and he did that  
10 initially, which I'm not sure is reflected in our papers, by  
11 recruiting him to work as a landscaper, you know, outside  
12 getting sweaty, working hard. He liked that; it was OK. And  
13 he went on to recruit him, I guess, realizing how articulate he  
14 was and embarking on the scheme, Mr. Hult, realizing how  
15 articulate he was and what an asset he could be to the scheme  
16 that Hult was hatching, he first recruited him to some sort of  
17 cryptocurrency business that failed after a month or two, and  
18 then to the, this business opportunity sales floor. And I  
19 think Mr. DePaola was willfully blind to that. There's no  
20 question about it.

21 THE COURT: No. He attended the Katabchi trial.

22 MR. MARGULIS-OHNUMA: Yeah.

23 THE COURT: He was friends with the Katabchis. He  
24 knew --

25 MR. MARGULIS-OHNUMA: No. Well, hang on. He didn't

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1 know the Katabchis.

2 THE COURT: I'm sorry. People involved with --

3 MR. MARGULIS-OHNUMA: One person. It was his  
4 childhood friend. He didn't meet that person through the  
5 scheme. So I think that's important to point out.

6 THE COURT: All right.

7 MR. MARGULIS-OHNUMA: He knew that guy, Owimrin, as a  
8 child, and actually after Joseph's father died, he rekindled  
9 his friendship with Andrew Owimrin, and then just a few months  
10 after starting to work at, you know, after working for Hult as  
11 a landscaper for a year, a few months after starting to work  
12 for him in the sales floor, the Katabchi trial was happening,  
13 and he went to one day.

14 And we understand the look there, and that the  
15 government was aware of it. He never denied going to that  
16 trial. He admitted that in his postarrest interview when he  
17 waived his Miranda rights, but we went back and looked at the  
18 transcript from the day he went to, and I'm not sure that --  
19 look, I'm not -- I don't want to deny the criminal culpability.  
20 He was willfully blind. There's no question about it, but it's  
21 not quite as stark as it sounds. He didn't see the  
22 government's opening statement, and I think there was a  
23 misstatement in my initial sentencing brief before I looked  
24 through everything, you know, before we looked through the  
25 testimony from the day he attended.

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1           He didn't really hear the government's case. What he  
2 heard was one of the codefendants testifying in his own defense  
3 and being cross-examined by the government. So I don't -- I  
4 think, yeah, he was willfully blind to what they were doing.  
5 The legality of it, you know, he was assured it was legal. He  
6 wanted to believe that. He was making more money than he'd  
7 ever made in his life. His family owned a bagel store growing  
8 up. Sometimes the bagel business was bleak and they struggled.  
9 Sometimes it was better. He had worked as a landscaper. He  
10 had not done well in school because of his learning disability.  
11 He was using a skill that he had for, in a bad way, that he  
12 knew was bad, but I hope in thinking about the entire person,  
13 that his overall moral culpability will come through as  
14 somewhat less than typical in the scheme as a whole. And I  
15 think that's actually reflected.

16           Another thing I want to add that's not in my papers is  
17 in the government's July 22 letter, ECF No. 309, there is the  
18 list of defendants integrated with the Katabchi defendants, and  
19 I didn't realize this because I read it too quickly before, but  
20 now I understand that it's not only in tiers but it's in order.  
21 So Mr. DePaola, yes, he was a closer, but I think even the  
22 government sees him at the very bottom of tier 3. And that's  
23 because his time working in the offense was relatively limited.  
24 His role in the offense was limited in the sense that he didn't  
25 have contact after the sale was made, so he didn't know quite

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1 how badly the customers were being treated. And that, it just  
2 goes to his overall --

3 THE COURT: He didn't have his own merchant account.

4 MR. MARGULIS-OHNUMA: Correct. He did not have his  
5 own merchant account.

6 THE COURT: He was doing well in AA.

7 MR. MARGULIS-OHNUMA: He's doing fantastically well in  
8 AA, and he's going to tell you in a minute about sobriety and  
9 what it means and what it means to him and physical versus  
10 spiritual or emotional sobriety. And he didn't get there when  
11 he was committing this crime, but I'm here to tell you today he  
12 got there now, that this was a wake-up call for him. He  
13 immediately waived his Miranda rights and engaged in an  
14 interview with the FBI. He immediately directed me to seek  
15 cooperation with the government, and he proffered a couple of  
16 times.

17 THE COURT: I saw that.

18 MR. MARGULIS-OHNUMA: Yeah, and I think the only  
19 reason that he was -- well, the government can tell you this,  
20 but I hope they'll tell you that the reason he wasn't signed up  
21 and didn't have a cooperation agreement is because the only  
22 information he had was limited to things they already knew, his  
23 experience there and his limited participation in the offense.

24 You know, I wish he would have been signed up as a  
25 cooperator. He would have been an outstanding witness. He was

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1 very careful to be truthful in those proffers. He didn't  
2 minimize. There were no issues of veracity. He just didn't  
3 know enough. He wasn't integrated enough with the offense. He  
4 was exploited by these people, and they didn't feel the need to  
5 let him in on their darkest secrets and he wouldn't, therefore,  
6 have been of much use.

7 So those are all mitigating factors. He's also, he's  
8 going to tell you in a minute, he's been sober since May of  
9 2018. He struggled with drug addiction his entire life. His  
10 father struggled with drug addiction. First, his marijuana use  
11 and party drugs but eventually painkillers, which led to  
12 heroin.

13 THE COURT: But he did just about everything.

14 MR. MARGULIS-OHNUMA: Yeah.

15 THE COURT: Cocaine, marijuana, oxy, mushrooms.

16 MR. MARGULIS-OHNUMA: Yeah.

17 THE COURT: He did the range.

18 MR. MARGULIS-OHNUMA: Yeah, and of those I think the  
19 most physically debilitating is heroin, because of --

20 THE COURT: That doesn't excuse the crime. It helps  
21 put it in context. It doesn't excuse it. It's good that he's  
22 sober.

23 MR. MARGULIS-OHNUMA: Right.

24 THE COURT: He's been sober since May of 2018.

25 MR. MARGULIS-OHNUMA: Right.

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1                   THE COURT: All of that's good. Now let's talk about  
2 the crime, because you wanted to talk about other things.

3                   MR. MARGULIS-OHNUMA: Oh, I thought I was talking  
4 about the crime. I was contextualizing the crime itself.

5                   THE COURT: All right. Fair enough. Fair enough.

6                   MR. MARGULIS-OHNUMA: I think that one thing we should  
7 talk about is the future for this young man and what he's going  
8 to do and where he's going to be, and I think, you know, his  
9 girlfriend, Lindsay Rothman --

10                  THE COURT: Welcome.

11                  MR. MARGULIS-OHNUMA: -- has been with us all along in  
12 this process and supportive of him.

13                  THE COURT: I saw that.

14                  MR. MARGULIS-OHNUMA: So since May of 2018 --

15                  THE COURT: That's very important.

16                  MR. MARGULIS-OHNUMA: So it's more than, well over  
17 three years of sobriety.

18                  THE COURT: Talk to me a little bit about general  
19 deterrence.

20                  MR. MARGULIS-OHNUMA: OK.

21                  THE COURT: Talk about general deterrence.

22                  MR. MARGULIS-OHNUMA: OK. So, the studies, I think,  
23 show, and I didn't cite them, but I suspect you're familiar  
24 with them, that short and definite sentences, knowing you're  
25 going to get busted for the crime is what deters people.

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1 Lengthy sentences don't add marginal deterrence, based on  
2 social science, and I think -- so we're not asking for no  
3 prison time, although I personally think it would be  
4 appropriate. In another world I think he would, you know, be  
5 forced to continue addressing his drug problem for a really  
6 long time and not go to prison but continue working  
7 legitimately and taking care of his girlfriend. But that's not  
8 what he told me to ask for here, because he feels guilty and  
9 thought it would be strategically better to ask for six months.  
10 So we're asking for six months in prison. That's devastating.

11 THE COURT: No. He's going to be going to prison for  
12 a longer term than that. I do not intend to sentence him to  
13 the guideline range, even the guideline range that we now have  
14 set upon, but nonetheless, it's going to be a significant  
15 sentence. It was a significant crime. We can talk about  
16 willful blindness, but he knew what he was doing.

17 MR. MARGULIS-OHNUMA: Let me say a word about that.  
18 Every extra day you give him in prison has a real impact on  
19 these folks' lives. And I want you to ask yourself, as you do  
20 that -- I'm sorry, how much more deterrence are you giving him,  
21 giving the world by another week, another month, another year?  
22 And I think after six months, the diminishing return is very  
23 great. I mean it doesn't -- it doesn't add much to give him  
24 seven or eight or nine months.

25 THE COURT: I'm not going to give him seven or eight

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1 or nine months. He's going to get more than that.

2 MR. MARGULIS-OHNUMA: Well, I'm sorry to hear that.

3 And again, if we're on the margins, I just -- you  
4 know, I'm sure you do, I hope you see the impact that that has  
5 on a young man and his family and his future and the world and  
6 the need for general deterrence and the dangers -- you know,  
7 I've been in the prisons now -- we've been going in; we weren't  
8 for a long time. The conditions in MDC and MCC at least, and  
9 hopefully he'll go somewhere that's a little better run than  
10 those places. I wouldn't even think about a federal crime in  
11 today's context. It's appalling how, the inability of the  
12 Bureau of Prisons to deal with the medical crisis that we've  
13 been seeing, and it's -- I mean, you know, I think a civilized  
14 country shouldn't deter people that way. I think we should  
15 find a better way to deter people, but nonetheless, if you're  
16 concerned about deterrence, every day more you add to him being  
17 in that confined, confined context while this pandemic is going  
18 on is an even greater deterrent than it would be in normal  
19 circumstances.

20 THE COURT: No. It may be even greater punishment. I  
21 don't know about even greater deterrence.

22 MR. MARGULIS-OHNUMA: Both, both.

23 THE COURT: I am concerned about punishment. I am  
24 concerned about general deterrence. The need for individual  
25 deterrence here, I think, is ameliorated in part by being

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1 sober, and I do sense from the papers that he is indeed  
2 remorseful. But general deterrence looms large here, as does  
3 punishment.

4 MR. MARGULIS-OHNUMA: If you have no other questions,  
5 I'll rest on those comments.

6 THE COURT: No.

7 MR. MARGULIS-OHNUMA: Mr. DePaola would like to  
8 address you too.

9 THE COURT: I appreciate your comments, and I always  
10 have trouble with your name, Mr. Margulis-Ohnuma. I apologize.  
11 I should know it by now, sir. My apologies. I think you've  
12 done with it what you can.

13 You know I sat through the Katabchi trial. I've seen  
14 the submissions of the victims. I've heard the victims of that  
15 trial. These scams focused on older people are devastating to  
16 the lives of older people. It's terribly unfortunate that the  
17 burden of criminal wrongdoing very often falls on totally  
18 innocent people. And I'm talking about the family here, his  
19 girlfriend, his friends, his family. And obviously, that's a  
20 factor, but it's the crime and the particular circumstances and  
21 characteristics of the individual and all of the factors in  
22 3553(a) that are important here. And again, it's just  
23 unfortunate that the family members, who very often know  
24 absolutely nothing about the crime. It actually wasn't true at  
25 the sentencing earlier today, as I'm sure you're aware, where

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1 both the husband and the wife are defendants in the case. But  
2 that's not the situation here, and that makes it all very  
3 unfortunate. But it's not really an excuse to treat the  
4 defendant differently.

5 All right. I appreciate your comments, sir. I truly  
6 do. Let me hear from the government.

7 Government.

8 MS. FLETCHER: Thank you, your Honor.

9 So, as the Court knows and as the government has done  
10 at virtually every sentencing in these cases, we tried to  
11 assess the defendant, the appropriate sentence for any  
12 individual defendant both with respect to the guidelines but  
13 also by comparing them to defendants who are similarly situated  
14 to them. And so in the government's view, this is reflected in  
15 our letter, the defendant who is the closest to this defendant  
16 in terms of role and culpability is Andrew Owimrin.

17 As the Court will recall from Andrew Owimrin's trial,  
18 Mr. Owimrin was not, was not experienced in any sort of sales  
19 role prior to joining the scheme. Like Mr. DePaola, he also  
20 had a very serious drug addiction. That drug addiction, I  
21 think, informed his willingness to enter into this scheme, and  
22 he received a sentence of 52 months. Now, I think there are a  
23 number of facts that differentiate this defendant from Andrew  
24 Owimrin, and Mr. DePaola's counsel has focused on some of them.

25 This defendant accepted responsibility. He pleaded

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1 guilty very early. The government took the position, as the  
2 Court will recall, that Andrew Owimrin perjured himself at  
3 trial. This defendant didn't do that. He expressed a  
4 willingness to cooperate quickly. He did proffer.

5 Without going into, I think, all of the government's  
6 considerations in deciding whether or not to continue to  
7 proffer him, I will say I don't think we concluded that he  
8 lied, but in much the same way that his counsel has said  
9 "willfully blind" multiple times today, that theme ran through  
10 his efforts to proffer with the government too and informed our  
11 willingness to proceed.

12 And I think one other thing that differentiates him  
13 from Andrew Owimrin, to the extent relevant to the Court's  
14 consideration, is this entire industry is a massive scam on  
15 vulnerable people, the elderly but also other vulnerable  
16 people. I don't know that there is any particular victim or  
17 instance within this scheme quite like what Andrew Owimrin and  
18 Katabchi did to Jane Thompson, and that was and continues to  
19 be, in the government's view, some of the most deplorable  
20 conduct.

21 That conduct was referenced during the government's  
22 cross-examination of Shahram Katabchi. That cross-examination  
23 also dealt with Shahram Katabchi's efforts to fight  
24 charge-backs for victims who claimed that they had dementia.  
25 So I say this both to, I think, ask the Court to contextualize

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1 whether, having viewed that cross-examination, Mr. DePaola  
2 could have left this courtroom with anything other than a  
3 conclusion that he was involved in fraud. But putting that  
4 aside, I don't believe he did, or I'm at least not aware of any  
5 victim who was victimized by this defendant in the way that  
6 Andrew Owimrin victimized Jane Thompson and Charlene Foster.  
7 And so I say that, again, to give the Court the government's  
8 view as to how this defendant should be compared to those like  
9 him and trust that the Court will impose a fair sentence in  
10 light of all of the facts.

11 If the Court has any questions, I'm happy to answer  
12 them. Otherwise, we'll rest on our submissions.

13 THE COURT: All right. Thank you. And I take it your  
14 submission is, as almost always, a guidelines sentence.

15 MS. FLETCHER: That is the submission, although, your  
16 Honor, I think that the recent sentencing have made clear that  
17 it's not always the government's position. I believe we sought  
18 a below-guidelines sentence for Ms. Cirilo and also for Ryan  
19 Hult. So the government is, is and does endeavor to be  
20 thoughtful about whether a below- or above-guidelines sentence  
21 is appropriate, and in this case, we believe a guidelines  
22 sentence is appropriate. But the Court, I think, can infer --  
23 and when I say a guidelines sentence, I mean the guidelines of  
24 46 to 57 months, I think the Court can infer where within that  
25 range the government would suggest a sentence be given the

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1 comparison we've just made to Mr. Owimrin.

2 THE COURT: Too much indirection.

3 Mr. DePaola, what would you like to say, sir, if  
4 anything? You don't have to say anything to me, sir. And  
5 anything you say can be used against you, but I'm hear to  
6 listen to anything you want to tell me.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir.

9 THE DEFENDANT: I appreciate it, sir.

10 Good afternoon, your Honor. I'd like to start by  
11 sincerely apologizing to the victims that I defrauded. The  
12 last date that I was physically addicted to drugs and alcohol  
13 was May 1 of 2018. I do consider that date my sobriety date.  
14 However, at that point, I was still engaging in the same  
15 selfish and destructive behaviors that led me into heroin  
16 addiction in the first place.

17 When I started working at Alliance, I was walking into  
18 a place where at the time I thought I was surrounding myself  
19 with a group of men living a sober lifestyle. I built  
20 relationships with these men through Alcoholics Anonymous.  
21 They became my friends as well as my mentors, one of them being  
22 Ryan Hult, who I referred to as coach. He was taking me  
23 through the 12 steps of Alcoholics Anonymous. That did require  
24 us having absolute trust with each other. I saw a group of  
25 people with years of sobriety, something at the time I couldn't

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1 imagine achieving. I saw them living lifestyles that I also  
2 desired, one with materialistic things, families, kids, and  
3 that was something that I strived for. I thought in order  
4 to -- excuse me. I'm sorry, your Honor.

5 THE COURT: No. Sir, this is difficult for everybody,  
6 I assure you, less so for me than for your family, but none of  
7 these things are easy. As your attorney has so articulately  
8 said, there are a lot of factors that go into this. It's hard.  
9 Take your time, whatever you need.

10 THE DEFENDANT: Thank you. I do appreciate that.

11 These things are what I thought I needed in order to  
12 be living a financially stable as well as sober life. Looking  
13 back at this time in my life, I was missing the core principles  
14 of what Alcoholics Anonymous actually stood for. Just because  
15 I wasn't using drugs or alcohol didn't mean that I was truly  
16 sober at all. I was dishonest and deceitful in every aspect of  
17 my life, most importantly towards the victims of my crime.

18 At the time, being financially stable was something I  
19 thought I needed in order to progress my life. I've come to  
20 realize that the stability in my life comes from my faith and  
21 my family, not through my financial gains. Today I aspire to  
22 live a life of honesty, integrity, humility, awareness, most  
23 importantly, service to others. These are some of the  
24 principles, among others, that I have been taught and  
25 implemented into my life and my recovery to practice true

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1 sobriety.

2 Thank you for your time, your Honor.

3 THE COURT: Thank you.

4 Mr. DePaola, you've come a long way. I think the  
5 major step you've taken is in terms of your being freed from  
6 your drug habit. No question about that. I think it's very  
7 important that you have been sober since May of 2018. I think  
8 that bodes well for you, not only for your future sobriety but  
9 for your being able to live in society with a decent job. You  
10 have one now, \$25 an hour as a customer service rep, if I  
11 understand it correctly from the papers, with this (inaudible)  
12 company, and you have a woman who's apparently stood by you  
13 through all of this.

14 All of that's important. But you knew what you were  
15 doing. I mean you admitted you knew what you were doing and  
16 you obviously knew what you were doing, and you knew that it  
17 was wrong and illegal and you kept at it. And  
18 Mr. Margulis-Ohnuma is right. You were kind of led into this  
19 by Hult, who was higher, much higher up on the scale than  
20 you -- that is, the scale of wrongdoing in this conspiracy,  
21 higher up in the leadership of the conspiracy than you. And  
22 that's unfortunate, and you were relying on him, I think, but  
23 that doesn't excuse your criminality.

24 As I said, and your lawyer agreed, you didn't have  
25 your own merchant account, which is a relevant thing here. You

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1 didn't own a sales floor. You were good at what you did. You  
2 helped Minetto and the other owner of the sales floor commit  
3 the crimes in this conspiracy, and I just can't ignore that.

4 I am going to go below the guideline range. In fact,  
5 I'm going to go lower than I had intended to do based on the  
6 presentation of your counsel.

7 My intention is to sentence you to 30 months'  
8 incarceration, sir, and the other recommendations of the  
9 probation department: Three years' supervised release. I've  
10 already signed the forfeiture.

11 Government, do you have a restitution order, or are  
12 you asking for additional time?

13 MS. FLETCHER: We'd ask for 90 days, please, your  
14 Honor.

15 THE COURT: Defense, is there any objection to 90 days  
16 here?

17 MR. MARGULIS-OHNUMA: No, your Honor.

18 THE COURT: All right. On restitution, I'm not going  
19 to order restitution now. I'll want a submission prior to 90  
20 days from now by the government and a statement by the  
21 government that the defense consents. And if the defense  
22 doesn't consent, I'll want a submission from the defense in  
23 regard to the government proposal, whatever that may be.  
24 That's my intentions at this point.

25 Sir, if you would rise, I will impose sentence.

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Pursuant to the Sentencing Reform Act of 1984, it is the judgment of this Court that the defendant, Joseph DePaola, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 30 months. Upon release from imprisonment, Mr. DePaola shall be placed on supervised release for a term of three years with the conditions recommended by the probation department; namely, the mandatory conditions set forth on page 28 of the presentence report plus the standard conditions 1 through 12, as set forth on pages 28 through 30 of the presentence report, plus the special conditions set forth on page 30 of the presentence report.

Within 72 hours of release from the custody of the Bureau of Prisons, you shall report in person to the probation office in the district to which you are released.

I'm not imposing a fine, sir, because I find you lack the ability to pay a fine after taking into account the presentence report and the forfeiture order and the restitution order that I almost certainly will impose approximately 90 days from now.

I hereby order that you pay, Mr. DePaola, to the United States a special assessment of \$100, and that special assessment is due immediately.

I've sentenced this defendant below the guideline range. I believe the sentence is appropriate given the seriousness of the offense and the need for punishment and

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1       deterrence, and my variance below the guideline range is based  
2       on this defendant's remorse as well as his hard-earned sobriety  
3       and his gainful term of employment.

4                  Mr. DePaola shall surrender for service of his  
5       sentence at the institution designated by the Bureau of Prisons  
6       on or before 2 p.m. on Friday, September 10.

7                  Mr. Margulis-Ohnuma, are you aware of any legal reason  
8       why the sentence should not be imposed as I have stated it?

9                  MR. MARGULIS-OHNUMA: I'm not, your Honor, but I do  
10      have a couple of applications.

11                 THE COURT: Yes, sir. Let me first impose sentence.  
12      Then we'll deal with them. I take it they're recommendations  
13      that you're seeking.

14                 MR. MARGULIS-OHNUMA: Yeah, and also on the surrender  
15      date.

16                 THE COURT: All right. Ms. Fletcher, are you aware of  
17      any reason why the sentence should not be imposed as I have  
18      stated it?

19                 MS. FLETCHER: No, your Honor.

20                 THE COURT: I hereby order the sentence to be imposed  
21      as I have stated it.

22                 What do you want to ask about the surrender date, sir?

23                 MR. MARGULIS-OHNUMA: One moment, your Honor. Sorry.

24                 So, yeah, both the designation and the surrender date.  
25      Mr. DePaola suffers from an undiagnosed obesity that makes him

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1 particularly susceptible, in my view, to the COVID-19 disease.

2 THE COURT: Undiagnosed what, sir?

3 MR. MARGULIS-OHNUMA: Obesity. He's way overweight,  
4 and that is a risk factor which he needs to be addressing and  
5 is not. We're working on that. Also, the guidance is changing  
6 daily. I understand this morning masks were not required and  
7 now they are required in the courtroom.

8 THE COURT: Yes, sir.

9 MR. MARGULIS-OHNUMA: The prison environment is  
10 incredibly vulnerable because of the close quarters of inmates  
11 that I discussed earlier in any prison that he ends up in, and  
12 for all those reasons, I would ask for a 90-day surrender date.  
13 Hopefully by that time the measures being, you know, taking  
14 into -- being effectuated now will have had the effect desired,  
15 and I'm concerned about, that he see a doctor before going to  
16 prison and deal with his obesity, if possible, to protect him  
17 from this deadly disease. So I think the risk will be  
18 substantially lowered by extending the surrender date to that  
19 extent.

20 THE COURT: I'll extend the surrender date until  
21 November 5, but I have to say that the existence of the Covid  
22 pandemic is not a reason to not be in prison. At the  
23 beginning, the prisons, I believe, really didn't know how to  
24 deal with the pandemic, nor did most people. Recently, they've  
25 been handling it quite well.

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1           Because I'm not requiring that he surrender now and  
2 I'm not requiring that he turn himself in to the marshals at  
3 the Southern District of New York but, rather, that he appear  
4 at the institution designated by the Bureau of Prisons, he's  
5 not going to be in the MCC or the MDC. He'll be in an  
6 institution where the conditions, I would hope, are far  
7 superior to those in the MDC and MCC, because in part, they'll  
8 be federal correctional institutions that are not jails. He  
9 will have a lot more room. He will have more opportunity for  
10 outdoor activities. There are essentially none here in New  
11 York City in the jails. He'll have better opportunity for  
12 programming, educational and vocational programming.

13           So I'm going to do it for 90 days. Obviously, I can't  
14 stop you from making any other requests, although I'll tell you  
15 my current intention is that he goes to the prison after 90  
16 days.

17           MR. MARGULIS-OHNUMA: Thank you, your Honor. So then  
18 my other application is that --

19           THE COURT: The obesity is simply something he's going  
20 to have to work on. It's not going to be solved in 90 days if  
21 it hasn't been solved in however long he's been obese.

22           MR. MARGULIS-OHNUMA: Yes, your Honor.

23           So the other application is that if consistent with  
24 his security designation, that you enter a judicial  
25 recommendation that he be designated to FCI Fairton, which

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would facilitate both family visits and access to the residential drug and alcohol program.

THE COURT: I don't make recommendations to specific institutions. I will make a recommendation that he be housed in a facility that facilitates visits with his family, who are located in New Jersey, I take it. Is that right?

MR. MARGULIS-OHNUMA: It is. But also where RDAP is available is an important consideration there.

THE COURT: Whether he's admitted to an RDAP program or not is up to the BOP. If he's eligible, he'll go through whatever their programs are.

MR. MARGULIS-OHNUMA: Judge, let me put my chips on the table. I don't want him or any other human being to go to Fort Dix. It is, and I think it's -- I'm not sure if Fairton is close. They're both in New Jersey, Fairton and Fort Dix. Otisville is closer to the part of New Jersey where he's from, but the Covid crisis at Fort Dix -- I've had a couple clients there -- has been totally out of control. It affects people --

THE COURT: That's not true currently. I've had some current figures. The recommendation stands, sir. I'm not going to except any particular facility. The recommendation to the Bureau of Prisons is that he be housed in a facility that facilitates visits with his family, who reside in New Jersey.

What else?

MR. MARGULIS-OHNUMA: That's all. Thank you, your

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1 Honor.

2 THE COURT: Did I ask the government whether it had  
3 any legal reason why the sentence should not be imposed as I  
4 have stated it?

5 MS. FLETCHER: I believe you did, your Honor. The  
6 government does not have a legal reason.

7 THE COURT: I hereby order the sentence to be imposed  
8 as I have stated it.

9 Mr. DePaola, you have the right to appeal the  
10 sentence. If you cannot pay the cost of an appeal, you have  
11 the right to apply for leave to appeal *in forma pauperis*.

12 Defense attorney, what was the limited waiver of  
13 appeal rights in the plea agreement, if you know?

14 MR. MARGULIS-OHNUMA: I think any sentence under the  
15 guidelines sentence stipulated in the plea -- plea agreement,  
16 so it, the waiver would be applicable.

17 THE COURT: Was that 57 --

18 MR. MARGULIS-OHNUMA: Yeah.

19 THE COURT: -- or 63?

20 MR. MARGULIS-OHNUMA: 57.

21 THE COURT: Mr. DePaola, I wish to inform you that in  
22 your plea agreement you agreed to waive the right to appeal the  
23 sentence and you agreed to waive the right to collaterally  
24 attack the sentence if I sentenced you to 57 months or below,  
25 and I've sentenced you to essentially half of that, 30 months.

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1 If you make a request, the clerk of court will prepare and file  
2 a notice of appeal on your behalf immediately. And in fact, if  
3 you do wish to appeal, all you have to do is tell  
4 Mr. Margulis-Ohnuma that.

5 And in that event Mr. Margulis-Ohnuma, I ask you to  
6 file a notice of appeal on behalf of your client.

7 Mr. DePaola, do you understand your appeal rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right.

10 Government, any underlying instruments?

11 MS. FLETCHER: No, your Honor.

12 THE COURT: No open counts?

13 MS. FLETCHER: No open counts.

14 THE COURT: All right.

15 Mr. DePaola, you're going to be fine. You're going to  
16 serve your sentence. You're going to use it as effectively as  
17 you can in terms of, you have a high school diploma. You can  
18 always get additional schooling. Additional education will be  
19 excellent for you. I hope you have your job when you get out.  
20 Certainly there will be other jobs, especially if you get other  
21 education behind you. The main thing from my standpoint, and  
22 I'm not a psychologist, is that you maintain your sobriety, not  
23 only, as you said, your technical sobriety but your  
24 understanding of how you should rule your life, how you should  
25 guide your life. I'm not here to tell you that it's the

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1 12-step method of AA or not. I just don't know enough about  
2 it, but you seem to really have a handle on it, sir. I think  
3 the main thing for me to tell you is from now on it's all going  
4 to be up to you and you don't have to come under the influence  
5 of any Ryan Hult or anyone else.

6 Any of that make sense?

7 THE DEFENDANT: Absolutely, your Honor.

8 THE COURT: I don't want to see you here again, sir.

9 That's not a threat. That's a hope that you're going to be  
10 successful.

11 Good luck to you.

12 THE DEFENDANT: Thank you.

13 (Adjourned)

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